

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

WASTE MANAGEMENT OF NEW YORK, L.L.C.

Employer

and

Case No. 29-RC-9633¹

WASTE MATERIAL, RECYCLING AND GENERAL
INDUSTRIAL LOCAL 108, AFFILIATED WITH THE
LABORERS INTERNATIONAL UNION OF NORTH
AMERICA, AFL-CIO

Petitioner

And

UNION LOCAL 116, PRODUCTION AND MAINTENANCE
EMPLOYEES²

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Kevin

¹ At the outset of the hearing, Case No. 29-RC-9631, filed by Local 660, United Workers of America, herein called Local 660, and Case No. 29-RC-9646, filed by Local 339, United Service Workers of America, TCU, AFL-CIO, CLC, herein called Local 339, were consolidated for hearing with the instant case. In addition, Local 813, International Brotherhood of Teamsters, AFL-CIO, herein called Local 813, intervened in Case No. 29-RC-9646, on the basis of its incumbency as the representative of certain employees of the Employer.

Prior to the second day of hearing, Local 813 withdrew from intervening in Case No. 29-RC-9646, which petition was then withdrawn by Local 339. Subsequently, on June 20, 2001, Case No. 29-RC-9631 was withdrawn by Local 660.

² Union Local 116, Production and Maintenance Employees, intervened in Case No. 29-RC-9633 on the basis of its incumbency as the representative of the employees in the unit sought. The Intervenor's name appears as amended at the hearing.

Kitchen, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The record reveals that Waste Management of New York, L.L.C., herein called the Employer, is a Delaware corporation, with its principal office and place of business located at 123 Varick Avenue, Brooklyn, New York, and facilities located at 221 Varick Avenue, 101 Varick Avenue, and 75 Thomas Street, all located in Brooklyn, New York, and 38-50 Review Avenue, Long Island City, New York, where it is engaged in the business of waste processing. During the past year, in its operations generally, the Employer purchased and caused to be transported and delivered goods and materials valued in excess of \$50,000, to its facilities from entities located outside of the State of New York.

Based on the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved herein claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The parties stipulated, and I find, that the following unit is appropriate for the purposes of collective bargaining:

All full-time and regular part-time laborers, equipment operators, traffic controllers, recycling drivers and helpers, container shop employees, drivers, welders and maintenance employees employed at the Waste Management facilities located at 123 Varick Avenue, 101 Varick Avenue, 221 Varick Avenue, 75 Thomas Street, all located in Brooklyn, New York, and 38-50 Review Avenue, Long Island City, New York, excluding all other employees, scale house operators, guards, and supervisors as defined in the Act.³

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than

³ In case No. 29-RC-9631, Local 660 sought an election in a unit consisting of all full-time and regular part-time employees, exclusive of guards, supervisors, and clerical employees, employed at the Employer's facilities located at 101 Varick Avenue, 123 Varick Avenue, 221 Varick Avenue and 75 Thomas Street, all located in Brooklyn, New York. The unit sought by Local 660 would have excluded the 38-50 Review Avenue facility, while including employees who are currently represented by Locals 813 and 282 of the

12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by Waste Material, Recycling and General Industrial Local 108, affiliated with the Laborers International Union of North America, AFL-CIO, or Union Local 116, Production and Maintenance Employees, or no labor organization.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before June 28, 2001. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the

International Brotherhood of Teamsters, AFL-CIO. In light of the withdrawal of the petition in Case No. 29-RC-9631, it is no longer necessary to resolve the unit issues raised by Local 660.

Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by July 5, 2001.

Dated at Brooklyn, New York, this 21st day of June, 2001.

/S/ ALVIN BLYER

Alvin P. Blyer
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National Labor Relations Board
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